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there is merely a "rebuttable presumption of fact" that they acquired the benefit in question by an improper use of their position. See Walter G. Hart, *The Development of the Rule in Keech v. Sandford*, in (1905) 21 L. QUART. REV. 258. It should be added that Ostrander, C. J., disagreed with the majority only upon the question whether the estate of the children should reimburse the plaintiff for his outlay. While doubtless the children had by their mother's release acquired the complete fee simple at law to the land—her prior conveyance to the plaintiff having given him at most an equitable claim—in equity that does not determine who is entitled, and the view of the majority seems clearly right.

INSURANCE—CONSTRUCTION OF POLICY—"GAS ACCIDENTALLY ABSORBED OR INHALED."—The insured held in a mutual association an accident certificate which provided that there should be no liability for accidental death "from . . . gases or anything accidentally or otherwise taken, administered, absorbed . . . or inhaled." While asleep in a hotel room, the insured was asphyxiated by escaping gas. *Held*, (two judges dissenting) that the defendant association was not liable. *Jones v. Hawkeye Com'l Men's Assn.* (1918, Iowa) 168 N. W. 305.

The decision is confessedly made in the teeth of cogent authority to the contrary, which is well reviewed in the dissenting opinion of Weaver, J. The latter argues strongly that similar words of the exception have been repeatedly construed by courts of last resort not to include the present case; that such decisions should control, or if not, they should at least create a doubt as to the meaning of the exception; and that doubts should for obvious reasons be uniformly resolved in favor of the insured. Further, that when the insurer, as in the present case, qualifies the broad terms of an exemption clause, he is bound rigidly to the strictest limits of his expressed qualifications. Thus an exception of death by poison "in any way taken, administered, absorbed or inhaled" was held not to cover death from chloral taken by mistake for distilled water. *Metropolitan Accident Assn. v. Froiland* (1876) 161 Ill. 30, 43 N. E. 766; but *cf. Porter v. Preferred Accident Ins. Co.* (1905, N. Y.) 109 App. Div. 103, 95 N. Y. Supp. 682 ("voluntary and involuntary inhalation" held to cover asphyxiation while asleep). "Had it been intended to exclude all liability for death by poison, a simple statement to that effect would have" sufficed. Thus far the dissent. On the other hand, when the company does not qualify broad language, the courts have been very ready to construct expansive restrictions of their own. *Accident Ins. Co. of N. A. v. Crandall* (1887) 120 U. S. 527, 7 Sup. Ct. 685 ("self-inflicted injuries" and "suicide" held not to cover death of insured by own hand while temporarily insane); and see *Northwestern Mut. Life Ins. Co. v. Hazelett* (1886) 105 Ind. 213, 4 N. E. 582. The dilemma of the company in drawing a policy is apparent. Granted that it is desirable to prevent insurance companies from including in policies exceptions which defeat the reasonable expectations of the unwary insured; should this be done by affixing to words meanings quite at variance with and almost unrelated to their meaning in ordinary life? The courts have so done in this line of cases; and this same Iowa court has participated. *Riley v. Interstate Bus. Men's Acc. Assn.* (1916) 177 Iowa 449, 159 N. W. 203. Such action produces the dilemma of the court in the principal case. The majority claim, with full justice, that if the words here used do not except the accident which here occurred, no words in our language can except it. If the contract were between ordinary mortals, this would seem the only sane decision. For in contracting men use words as they are used in the world of men, and not as they have been construed by courts in a technical attempt to defeat an equally technical and unfair advantage.

obtained by one of the parties. Where the contract is a technical one drawn by technicians it is doubtless more reasonable to hold them to the meaning of their terms as laid down by the courts. *Cf. Devine v. Devine* (1918, N. J. Ch.) 104 Atl. 370. Even then, it may become advisable to avoid absurdity by allowing language to carry the sense its words cry for. The action of the court in the instant case is bold. The authorities seem in sense and in law unsound. They are based on conscious or unconscious rebellion against letting an insured be tricked out of benefits which the courts believe he was justified in expecting. The court here disregards them; it refuses to let a hard case make bad law—in the hope that the legislature will act.

TAXATION—INHERITANCE TAXES—DEDUCTION OF FEDERAL ESTATE TAX BEFORE ASSESSING STATE INHERITANCE TAX.—A resident of New Jersey died testate leaving an estate upon which the federal estate tax was more than \$1,000,000. The question arose whether this sum should be deducted from the appraisement of the estate in computing the state inheritance tax. *Held*, that the federal tax was to be deducted from the value of the estate in ascertaining for the purposes of state taxation "the clear market value of the property transferred." *In re Roebbling's Estate* (1918, N. J. Prerog.) 104 Atl. 295.

A resident of Illinois died testate leaving an estate upon which a federal estate tax was assessed. *Held*, that in computing the state inheritance tax the federal tax was to be deducted as an expense of administration from the gross value of the decedent's property. *People v. Pasfield* (1918, Ill.) 120 N. E. 286.

The important question raised by these cases has already been passed upon in several states and is certain to arise in others. In Minnesota and Connecticut the deduction has been allowed. *State v. Probate Court of Hennepin County* (1918, Minn.) 166 N. W. 125; *Corbin v. Townshend* (1918) 92 Conn. 501, 103 Atl. 647. In New York the deduction has been denied. *In re Sherman's Estate* (1917) 179 App. Div. 497, 166 N. Y. Supp. 19; affirmed without opinion in 118 N. E. 1078. For a discussion of the relative merits of the two views, approving the former, see (1918) 27 YALE LAW JOURNAL, 1055. In the principal cases the nature of the federal estate tax is considered at length. The opinions point out that it resembles the old English probate duty and is a charge against the estate of the decedent, not a charge against the beneficial shares of the several legatees or distributees of the decedent. The constitutionality of such a tax is considered and affirmed in the Illinois case. State inheritance taxes, on the other hand, are commonly based upon the privilege of the beneficiaries to receive the decedent's property by will or intestate succession, and are measured by the value of the property so passing to them. Hence a probate duty chargeable against the decedent's estate is properly deducted, like debts and expenses of administration. This would seem to be clearly true in respect to the Illinois inheritance tax. It is not quite so obvious in the case of the New Jersey tax because the courts have construed that tax, at least in the case of non-resident decedents, as being a tax upon the transfer to the executor or administrator, not as a legacy tax on the succession of the beneficiaries. See (1918) 27 YALE LAW JOURNAL, 1055, at 1059. It is interesting to note that under the New York view the federal tax is ultimately deducted *pro rata* from the several legacies instead of being treated as an expense of administration deductible from the residuary estate. *In re Douglass' Estate* (1918, Surr.) 171 N. Y. Supp. 956.

TORTS—THREATENED PHYSICAL INJURY TO LAND—NO RECOVERY FOR DEPRECIATION IN MARKET VALUE.—The defendant corporation placed upon its own land a large pile of "strippings" (soft earth, quicksand and gravel) from a mine.